(28)

AI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 553/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA,J.

APPELLANT Hemlal, S/o Maniram Satnami aged about 22 years, Resident of Bardula, Thana- Sarangarh, Distt. Raigarh, CG at present R/o village Kubedema, Thàna Bharen, Distt. Bargarh (Orissa)

VERSUS

RESPONDENT State of Chhattisgarh

1-11-2007

Smt. Hameeda Siddiqui, Advocate for the appellant.

Shri Neeraj Mehta, Panel Lawyer, for the State.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 11-3-2004 passed S.T. No. 277/2003 whereby learned 1st Additional Sessions Judge, Baloda Bazar has convicted the appellant under Sections 363, 366 and 376(1) of I.P.C. and sentenced him to undergo R.I. for 2 yeas with fine of Rs. 500/-, R.I. for 3 year with fine of Rs. 500/- and R.I. for 7 years with fine of Rs. 1000/- and in default of payment of fine, to further undergo R.I. for 6 months, 1 year and 2 years respectively.

3. The case of the prosecution is that the prosecutrix aged about 15 years resides with her parents at Sarsiwan. The accused also resides in the neighbourhood with his sister Pusai. The appellant enticed the prosecutrix on the promise of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

marriage and took her to village Barbhatha, P.S. Sarangarh on 27-8-2002 and from there she was taken to village Kubediga and he also raped her in the meantime. When the prosecutrix asked him to merry, he denied and ultimately the report was lodged in the Police Station Sarsiwan. During investigation, the prosecutrix was medically examined as also the accused. School Certificate of Ex. P-6 of the prosecutrix was also taken into possession and thereafter the charge sheet was filed.

4. During trial, 9 witnesses were examined by the prosecution, thereafter the statement of the accused was recorded in which he pleaded innocence and false implication. However, learned trial Court after hearing the learned counsel for the parties has convicted and sentenced the accused as mentioned above.

5. Learned counsel for the appellant submits that the Court below has convicted the appellant with the finding that the appellant took the prosecutrix on the promise of marriage and thereafter he subjected her to rape. Since the age of the prosecutrix on the date of incident was less than 18 years and she was taken from the lawful custody of her guardians without their permission on the promise of marriage, therefore the act of the appellant is an offence within the meaning of Sections 363, 366 and 376(1) of I.P.C. It is argued that there is no reliable and

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

trustworthy evidence available on record regarding the age of the prosecutrix as the prosecutrix has not been referred to radiologist and the finding of the trial Court is based on the school certificate of Ex. P-6 which may not be considered to be a conclusive proof of the age.

6. On the other hand, learned counsel for the State has supported the impugned judgment.

The only question to be decided in this appeal is whether the finding of the trial Court that the age of the prosecutrix was less then 18 years on the date of incident is in accordance with law or not ?

From the statement of the prosecutrix (P.W.1) it is clear that she went with the accused without seeking permission from her parents. She was studying in Class 6 (B) and after the appellant took her from her parents' house on the promise of marriage, he committed rape with her for a continuous period of 1 month in village Kubediga and she resided with him for a period of 9 months and the rape was committed on the promise of marriage.

P.W. 2 Mahadev is father of the prosecutrix. He has stated in para 2 of his deposition that his daughter is 14 years old as his eldest son Bhojram is aged 19-20 years old and the prosecutrix is 4-5 years younger to him. He has admitted his

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	daughter in school at the age of 6 years. She was studying in Class 6 when she left her study. Ex. P-6 is school certificate which was seized from him. He does not remember the exact date of birth of his daughter however, when he admitted the prosecutrix in the school, he had taken her date of birth from village Kotwar and her date of birth was recorded on the basis of the slip given by village Kotwar. P.W. 3 Punnibai, mother of the prosecutrix, has also stated that her daughter is 13 to 14 years of age as she is a student of Class 6. She was admitted in the school by her father. There is no cross-examination of these witnesses regarding the above versions and the trial Court on the basis of the statement of theses two witnesses has held the age of the prosecutrix to be less than 16 years on the date of incident. The finding of the trial Court is based on proper appreciation of evidence available on record. In the light of the above discussion, this Court is of the considered opinion that the trial Court has not committed any illegality or infirmity in convicting and sentencing the appellant as above. The appeal being devoid of substance is liable to be dismissed and it is accordingly dismissed. Sd/- DHIRENDRA MISHRA Judge	

P/-

[पेज देखें